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LETTERS TO PROMINENT PERSONS.

NO. II.—TO JUDGE ALLEN G. THURMAN.

MY DEAR JUDGE THURMAN :

To address you by the title which comes most naturally to the lips of those who know you best is to paint in a word the dominant qualities of your nature which made you, by the unanimous verdict of your colleagues of both parties, an acknowledged law-lord of the Senate, before you had sat out one-third part of your first term of service in that august and by no means impressionable body.

It is also, as I shall show, to answer a question which all the country has been asking itself ever since it was first dazzled, not to say dazed, by the brilliant absence of Democratic names of national repute from the lists of President Cleveland's constitutional advisers.

A novelist who should bring to his work the constructive might and ability of an Owen, might throw a flood of light on the subtle diseases which are dissolving the body politic of our modern society, by skillfully developing into an analytical romance the half-forgotten essay of William Hazlitt "On the Look of a Gentleman."

Were an American Hazlitt to attempt a similar essay "On the Look of a Judge," he must inevitably draw two portraits. Some of us would recognize in one of those portraits, the large and leonine traits of the late Judge Nelson, and recall with a blush of shame that triumph of the pygmies over the giants which he sought in vain to stay, and which plunged the American people into the Red Sea of Civil War.

All of us, I am sure, would recognize in the other of these portraits, the ample brow, the massive frame, the kindling clear gray eye, under the stress of which, on one remarkable occasion, I saw the glib Mephistopheles of a millionaire conspiracy for rigging legislation go suddenly dumb and limp, creep with fumbling hand

to the door-knob and vanish from your presence like a ghost at cock-crow.

Despite your love of hoddin-gray, the motto of old "blue and yellow," *judex damnatur cum nolens absolutur*, might well be yours. "Let no guilty man escape" would have been no idle form of words, had it been uttered under the roof of the White House by you; nor does the man live who will venture to say that he believes it would have been possible for any public servant to sit in the same Cabinet with you for twenty minutes after it had been conclusively shown to you that he had used his official authority to re-enforce, with the power and influence of the Federal Government, a suit at law instituted for the benefit of a corporation numbering him amongst its stockholders and its directors.

It is told of Sir Powell Buxton, the right arm of the great emancipation movement in England, that, upon the eve of the day fixed by him for bringing forward that motion in the House of Commons, which eventually secured the freedom of the West Indian slaves, Lord Althorp, then a member of the Government, and his close personal friend, came to him as he took his seat in the House, and, stating certain considerations of policy, entreated him to defer the motion for a specified time. Buxton listened tranquilly to all the Minister had to say, and then, looking him full in the face, calmly replied :

"I do not say, Althorp, that rather than trifle with this measure as you suggest, I would allow my head to be cut off; but I do say most emphatically, that rather than do so I would certainly see your head cut off."

This story has more than once recurred to my mind when I have remembered your brief but conclusive response to the pleas for indulgence urged on you, in perfect good faith, by a friend of yours and of mine, who came to you with the request that you mitigate your determination that the Pacific Railway Companies should be held to the extreme letter of their obligations, and that a halt should be called in that career of corruption in the course of which, as you so convincingly demonstrated to the people of the West during the great preliminary campaign which resulted in the election of Mr. Tilden to the presidency, "these companies, principally ruled and governed by certain members of Congress, had made it absolutely certain that the people of the United States must be defrauded of not less than fifty millions of dollars."

When our friend had exhausted the quiver of arguments, you shook out that historic red bandanna, with a gesture familiar to the Senate on many a hot field-day of debate, and exclaimed :

"It can't be done! it can't be done! It is idle to talk about it! There isn't an iota of reason why any consideration should be shown to these people; and I tell you, once for all, that, so far as I am concerned, all the wealth in the Comstock lode would not make me entertain for one moment the thought of remitting in their favor one penny of their dues to the Government and the people."

I dare say you have never thought of this conversation since it occurred, for though I have heard you tell a thousand tales of your exploits as an angler since you established your reputation as a master in that gentle craft by sending a seventy-five pound cat-fish in ice all the way from Columbia in Ohio to the Oakland House in Maryland, I do not know that either I or any other man ever heard you celebrate your own senatorial chastity, or saw you pose in a toga for a statue of Cato the Censor.

But our friend has not forgotten it ; and it may perhaps surprise you to learn that whispers of it were wafted (not by him), during the winter of 1884-85, from a Pythian shrine on the banks of the Hudson to listening ears at Albany. Monopoly is the chief of cowards, and therefore, also, the chief of eavesdroppers. It has the instincts of a criminal for the faces of a jury. "Some men," Rufus Choate used to say, "we hate for cause, others we hate peremptorily." You have been hated by monopolists from your first entrance upon public life—hated peremptorily before you were hated for cause. How bitterly hated, we saw when your name was brought before the Legislature of Ohio as a candidate for the Senate at the end of your second term.

"It has cost us a power of money," said a well-known manipulator, "but we have beaten that d—d Thurman at last!"

Your intolerance of corruption is deadly because it is instinctive, simple, almost unconscious. No man is more catholic in his tastes, more cordial in his temper, no man less disposed than you to define his social by his political sympathies.

But I am sure it would never have occurred to your practical and prosperous friend, the Senator from West Virginia, to think of asking you, as he asked a bitterly virtuous colleague of yours, to join a certain cavalcade through the mountains of your native state in quest of an opening for railways.

So marked is the unmanageably judicial turn of your mind that I should be half inclined to call the failure of President Cleveland to call upon you, when he was concocting his Cabinet, rather creditable than otherwise, from his then point of view, to his sagacity, could I believe that it was determined by his personal appreciation of your temperament. You were certainly the last man in the world to be invited by a green hand into a domestic orchestra of flutes and soft recorders, precisely because you were the first man in the Democratic party who would have been invited by an experienced Executive into a real Council of constitutional advisers. But, although the influences which wrought upon the mind of President Cleveland, at the time to which I refer, in regard to you, had their roots in party transactions of which President Cleveland is doubtless as innocently ignorant to-day, as he was when he was suddenly precipitated, by the collapse of the schemes of a leading Brooklyn politician, from the Mayoralty of Buffalo into the Executive Mansion at Albany, four short years ago ; their immediate effect, so far as he was concerned, unquestionably was to secure to him the undisturbed enjoyment, which he desired, of his own initiative in the administration of the Government. It is not disrespectful to say of him that he began his Presidency like a sort of Robinson Crusoe in politics ; and I cannot really imagine a more inconvenient Man Friday than he would have found you to be !

Who can suppose, for example, that, if you had accepted a seat in his future Cabinet, in January, 1885, that remarkable letter on the Silver Question could ever have been dispatched by an incoming President to an outgoing Congress in February ? It is an open secret, now, that the incoming President never took the trouble to submit that letter to the consideration of more than one of his selected "advisers" before he caused it to be sent to Washington ; nor can any one who was on the spot at the time forget the feverish anxiety, manifested by more than one of those selected and expectant advisers, to get a sight of the document as soon as they learned of its existence. It would have been an awkward thing to take a liberty of that sort with you ! Very awkward ; and yet how much trouble the new President would have escaped had he encountered at the outset of his administration the wholesome corrective of a collision, on such an issue, with a will so firm and a knowledge of the conditions of Executive success so thorough as yours !

It would have put him at once into touch with the living and practical forces of American politics. It would have thrown into their proper perspective the palaverers and the fawning political quacks who trooped to Washington in hordes to practice upon his inexperience; and to assist him in discovering America and verifying the processes of the multiplication table.

Take the vital question of silver and of its functions in our currency. In what respect has the discussion of this question been advanced toward a practical solution, by all the trouble which President Cleveland has taken in regard to it, beyond the point at which you left it when, as a Delegate of the United States to the International Monetary Conference at Paris, you said to your colleagues on the 2d of July, 1881:

"I believe that Bi-metallism will ultimately prevail; for I cannot see how the vast structure of credit—the most distinguishing feature of modern industry and commerce—can be supported on a gold basis alone. With both metals, its base has often been found too narrow; with but one, it would be, to my apprehension, positively unsafe."

France has appointed a Permanent Commission to watch and promote her interests as a silver-using country in connection with the question of international bi-metallism.

In Germany, the subject is agitating both the imperial Reichstag and the Landtag of Prussia, and the German Chancellor who, in 1881, contented himself with making a Platonic declaration, through the German delegates at Paris, of his belief that a "rehabilitation of silver is desirable," is now engaged, to use his own picturesque language, "in sounding the ground to see whether he may safely venture on it in quest of the free coinage of silver, as he would send a boy before going in to shoot snipe." Even in England the press assures us that men of light and learning in both Houses of Parliament and of both political parties are beginning to admit, what was clear to you long ago, that "the attempt to support the vast structure of credit on a gold basis alone" threatens grave disasters, not only to the commerce and the liberty of the rest of mankind, but to the liberty, more precious in their eyes, of John Bull himself.

Had President Cleveland taken counsel with you before he brought himself into contact so unceremoniously with the mind of his party in the House of Representatives on this subject, who can doubt that he would have found himself to-day infinitely nearer to

some working agreement with the national legislature than he now is, or seems likely, within any reasonable time, to be. And this, not because you are a Western man, not because you represent what are called the "ideas of Ohio," but simply because you would have taken into the Cabinet the broad judicial common-sense which in the Senate commanded for you the respect even of your most determined political antagonists. When you advocated in the Senate, on the 6th of February, 1878, the passage of the House bill authorizing the free coinage of the silver dollar and restoring its legal-tender character, your statements of the case covered it like the summing up of a Marshall. You said, with truth, of your speech on that occasion, that it was "as plain," and, with less truth, that it was "as dull, as a pikestaff." You did not find it necessary, to be sure, to preface your statement, as one of your colleagues did, with a kind of rhapsody, or to aver that you "stood awe-struck and almost appalled at the consent of mankind in all ages to use the two precious metals." But you put away all decent pretexts for hot recrimination between the "goldings" and the "silver swindlers" by a simple recital of undeniable facts.

"Mr. President: Silver and gold have been the metallic money of the world for thousands of years. They were the money of our Constitution. They were the metallic money of the Colonies and afterwards of the United States from the Declaration of Independence until silver was demonetized by mistake, and without the knowledge of the people or Congress, by the enactment of the Revised Statutes in 1874. Both metals are suited to perform the functions of money, and silver does perform that function among a large majority of the human race. Silver is especially suited for small transactions, and may, therefore, properly be called the money of people in humble circumstances. It follows from these premises that the burden of proof rests on those who insist that silver should be demonetized."

Can anybody imagine such a locking of horns as the country has this winter seen at Washington, between a Democratic majority in the House of Representatives and the Cabinet of a Democratic President dealing with this subject in the spirit of this judicial statement?

And, putting aside all considerations of party, will any intelligent man deny that such a locking of horns between a party majority in the House of Representatives and a President elected by the voters whom that party majority represents, is a thing undesirable in itself and dangerously inconsistent with the smooth and prosperous play of the machinery of our government?

You are too fond of and too familiar with the best literature of France to need to be reminded that every man must have "the defects of his qualities." I doubt not you made out this great truth by the light of your mother-wit years ago when, at Chillicothe, that fair young exile of sunny France led you with a gentle hand through the thorny mysteries of Noël and Chapsal into the pleasant gardens and woodlands of La Fontaine. You will not quarrel with me now, therefore, for citing, in illustration of it, the part, such as it was, which you were led into taking in the performances of the Electoral Commission of 1877. Nothing, I am sure, but your judicial love of a tribunal and your lawyer-like faith in legal contrivances could have seduced you into listening to the specious proposition of your colleague from Vermont. I firmly believe that you never for a moment imagined it to fall within the compass of things possible that a judge of the Supreme Court of the United States could be constrained or cajoled into playing the part actually played in that scandalous transaction by Mr. Justice Bradley. You thought the interests of justice and the rights of the people safer, I remember, when they passed into his hands than they had been in the hands of that ponderous yet nimble son of Illinois, Mr. Justice Davis, who whisked his ambition and his avoirdupois so suddenly and so deftly from the bench into the Senate Chamber—for you believed Bradley to be the better lawyer of the two, and the more loyal to the law.

"He can be trusted" you said to one of the keenest and most skeptical of Mr. Tilden's counsel,— "he can be trusted. In the Grant Parish case, reported in the second of Wood's Reports for the Fifth Circuit, he decided some provisions of the Enforcement Acts to be unconstitutional. He knows the law of Louisiana thoroughly. He knows the condition of the state. He has been upon that circuit ever since his elevation to the bench, and I am sure we can trust him."

I can see you, now, as you sat at that fatal table in the old Senate Chamber, then the Chamber of the Supreme Court. Of the five justices of that high tribunal, who sat there with you, not one, had he worn the robes of office which lend so much dignity to the least dignified of men, could have looked the judge as you looked it, muffled up though you were in your great gray comforter, and waving ever and onon the inevitable bandanna. You sat there, grave, watchful, but serene and confident, till the vote was taken on the case of Florida and the voice of the judge in whose piety you trusted was given to

the fraudulent claimant of the highest office in the gift of a free people. What you suffered at that moment may be taken, I think, as an adequate expiation of your personal acquiescence in the scheme through which that suffering befell you. What passed in the secret conference of the Commission on the case of Louisiana, you best know—but what you thought of it all from that moment, the Senate and the country quickly learned in that indignant speech in the Senate in which you mercilessly denounced the Commission and all its works, and called for the passage of a resolution setting aside its decisions and especially condemning the audacious contention that the vote of an ineligible elector must be counted as valid.

“ This decision,” you said, with honest heat, “ will have the effect of a proclamation, assuring dishonest returning-boards that they are free to perpetrate whatever villainy these outcasts may dictate, with an absolute certainty that the villainy will stand.”

But the mischief was done, nor could all your eloquence undo it. It taught you nothing new as to the unscrupulousness of politicians, nor, to do you justice, did you affect the transparent astonishment which some of your Democratic colleagues pretended to feel that “ men in positions so high could stoop so low.” You knew better. You had watched too long the hinges of their knees to be surprised when your associate from the House, Mr. Garfield, chuckled to you, as you sat near him on the bench, over the progress of the game, and whispered, “ Make the best of it—you’ll have to grin and bear it ; we hold the cards, and we mean to play them.”

What you really felt as a wound was the blow struck at your reverence for your profession—for the bar and for the bench. Men saw the force of this blow written in your face and in your bearing. It was a surprise to many who watched the proceedings from day to day to learn that you had been ordered by your physician to keep within-doors. On the 28th of February, 1877, the Commission adjourned to your house, and the vote on the Oregon case was taken there in your bed-chamber. Three days afterward you sent a letter to your colleagues stating that you were physically unable to serve any longer, and the Senate relieved you, putting Mr. Kernan, of New York, into the odious and unwelcome post.

It has been imputed to you as an evidence of moral weakness

that you should then have declined, in the language of Garfield, to "grin and bear" to the bitter end the playing of a game in which you saw so clearly that the cards were stacked, not only against the rights of your party, but against the honor of your country and the very life of free institutions. I do not so regard it. Had you not denounced the course of the Commission in the open Senate, this charge might be brought with more plausibility against you. It would have been well had you never consented to the evil thing. But it was surely better to shake yourself free of it, before its dismal work was done, than to lend even the silent sanction of your presence to the consummation of so foul a wrong. Nor can I forget, when I hear men lay the discount upon your claims to confidence and admiration, the firmness and the courage with which you bore yourself through a scarcely less trying epoch in our history.

The tale of Reconstruction seems to us a chapter now, thank Heaven, of almost ancient history. Yet, no more than fifteen years ago, in the month of February, 1871, the Republicans in the Senate, under the leadership of Senator Conkling (truly "the whirligig of time brings in his revenges"), made a desperate and determined effort to coerce a little handful of Democratic senators into contributing to form a quorum of that body in order that a Force Bill, sent up from the lower House, might be driven through to its passage. Four Democratic senators were in their seats—Mr. Bayard of Delaware, Mr. Casserly of California, Mr. Thurman of Ohio, and Mr. Johnston of Virginia. To make these four senators vote upon the question of the consideration of the Force Bill was necessary, if the Senate was to take it up and pass it; and to this problem, Senator Conkling set himself with his usual emphasis and skill, Senator Carpenter, in the chair, most manfully assisting him. You had then been for two years a member of the Senate, and the Republicans had begun to feel that liking for you which it is in the blood of all men of our race to feel for an antagonist who neither flinches nor hits foul. Between the spur of the Senator for New York and the official whip of the Senator for Wisconsin, the Senator for Delaware and the Senator for Virginia successively were brought to their feet and cornered into negative votes. The Senator for California (too early lost to his party and to his country), to whose persistent energy and untiring labors the merchants of New York are so deeply indebted for the staunchest

fight ever made in defense of their rights against inquisitorial tyranny, had struck some stinging blows at the majority during a brief preliminary discussion of the conduct of the Republicans in urging such a measure at such a time, the Senate having been kept in session upon the false pretense that an appropriation bill was to be pressed.

But when he was called upon to vote, the young Irish Senator nodded pleasantly across the floor to you, folded his arms and made no sign.

You likewise sat dumb and deaf, and the Muse of History may range at will through the fields of infinite conjecture as to the processes by which a senator who can vote and won't vote may be made to vote ; for the opportune arrival of a squad of Republican senators left you, with your Californian ally, the unchallenged masters of the field.

“Other times bring other needs.”

Your judicial temper, your firm sense, your loyalty to party principles, have undoubtedly earned for you the right to enjoy, in dignified repose the honor and esteem in which you are held by your State and by Democrats throughout the country. The complimentary vote of the Ohio Democrats, given you at the recent senatorial election in that State, was meant to decorate, not to disturb your retirement, and attests the strength of your hold upon the regard of your own people. You have passed the arbitrary line of three-score and ten, fixed by legislative wisdom as the natural term of judicial usefulness upon the bench. But where is a judicial temper so much needed as in the councils of the great party of which you have so long been a trusted champion and chief ? And what signifies the solemn verdict of “legislative wisdom” as to the natural term of judicial usefulness upon the bench or off the bench, in the face of the undeniable fact, if I may be pardoned for using so awful a word, that this is an age of grandocracy ? You are a younger man than the Pope. In comparison with the newly-elected President of the French Republic you are almost a youth. In comparison with the German Emperor, you may almost be called a lad. Were you to be made a candidate for the Republic in 1888, you would still be a younger man than the English Premier is, who is grappling to-day so blithely with the tremendous political problem of the settlement of Ireland. M. de Lesseps, “the great Frenchman,” flits about to-day between the Isthmus of Suez and the

Isthmus of Darien, though eight years your senior, with the alert indifference of a Boston bagman.

Far be it from any of your friends to urge you into the arena of political emulation. But, if there be any foundation of truth for the rumors which caused your recent journey from Columbus to Washington, with a dawning desire on the part of the elected Chief Magistrate of the Union to revise his somewhat Utopian theories of political organization and to give up trying to navigate the Ship of State by dead-reckoning, there surely is work, and most important work, for you to do, and he is no true friend to you, to your party, or to your country, who will hesitate to urge you to do it under almost any conditions compatible with your self-respect.

The leader whose right you loyally, though unsuccessfully, strove to protect against fraud and usurpation ten years ago, still lives, physically a much weaker man than yourself. But the Democratic party still looks to him, nor looks in vain, for counsel and for inspiration. At this moment, indeed, his clarion call rings through the land, bidding us build the forts and launch the ships which alone can insure the safety of the Republic, and, with its safety, its weight and instance among the nations of the earth.

Nay; there are not wanting those who affirm that, morally and metaphorically speaking, it was he who in truth led the Democratic legions to victory in 1884, even as the dead Cid rode forth on Baveca to shatter the ranks of the Moors, or, as the bones of Edward the Long-shanked, were borne before the invading host of England into the land of the Bruce.

It is no fault of his, and assuredly no fault of yours, if the fruits of that victory now begin to assume a certain wan and shriveled aspect, as of so many apples of Sodom.

But will your party, my dear Judge, hold you excused, will you hold yourself excused, if, in the presence of so much confusion within your party ranks and of such exultant preparations of the gospel of war along the line of your enemies, you come not forth to sound as of yore the trumpet, and point as of yore the way to effective battle and to enduring triumph?

ARTHUR RICHMOND.